

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 39

AN ACT

To repeal sections 195.211, 195.214, 195.218, 195.417, and 650.105, RSMo, and to enact in lieu thereof nine new sections relating to methamphetamine, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 195.211, 195.214, 195.218, 195.417, and
2 650.105, RSMo, are repealed and nine new sections enacted in lieu
3 thereof, to be known as sections 195.211, 195.214, 195.218,
4 195.417, 488.029, 577.075, 650.105, 650.350, and 1, to read as
5 follows:

6 195.211. 1. Except as authorized by sections 195.005 to
7 195.425 and except as provided in section 195.222, it is unlawful
8 for any person to distribute, deliver, manufacture, produce or
9 attempt to distribute, deliver, manufacture or produce a
10 controlled substance or to possess with intent to distribute,
11 deliver, manufacture, or produce a controlled substance.

12 2. Any person who violates or attempts to violate this
13 section with respect to manufacturing or production of a
14 controlled substance of any amount except for five grams or less
15 of marijuana in a residence where a child resides or within two
16 thousand feet of the real property comprising a public or private

1 elementary or public or private elementary or secondary school,
2 public vocational school or a public or private junior college,
3 college or university, or any school bus is guilty of a class A
4 felony.

5 [2.] 3. Any person who violates or attempts to violate
6 this section with respect to any controlled substance except five
7 grams or less of marijuana is guilty of a class B felony.

8 [3.] 4. Any person who violates this section with respect
9 to distributing or delivering not more than five grams of
10 marijuana is guilty of a class C felony.

11 195.214. 1. A person commits the offense of distribution
12 of a controlled substance near schools if such person violates
13 section 195.211 by unlawfully distributing or delivering any
14 controlled substance to a person in or on, or within two thousand
15 feet of, the real property comprising a public or private
16 elementary or secondary school, public vocational school, or a
17 public or private junior college, college or university or on any
18 school bus.

19 2. Distribution of a controlled substance near schools is a
20 class A felony which term shall be served without probation or
21 parole if the court finds the defendant is a persistent drug
22 offender.

23 195.218. 1. A person commits the offense of distribution
24 of a controlled substance near public housing or other
25 governmental assisted housing if he violates section 195.211 by
26 unlawfully distributing or delivering any controlled substance to
27 a person in or on, or within one thousand feet of the real
28 property comprising public housing or other governmental assisted

1 housing.

2 2. Distribution of a controlled substance near public
3 housing or other governmental assisted housing is a class A
4 felony which term shall be served without probation or parole if
5 the court finds the defendant is a persistent drug offender.

6 195.417. 1. No person shall deliver in any single
7 over-the-counter sale more than [three]:

8 (1) Two packages or any number of packages that contain a
9 combined total of no more than six grams, of any [methamphetamine
10 precursor drug or any combination of methamphetamine precursor
11 drugs.

12 2.] drug containing a sole active ingredient of ephedrine,
13 pseudoephedrine, phenylpropanolamine, or any of their salts,
14 optical isomers, or salts of optical isomers; or

15 (2) Three packages of any combination drug containing, as
16 one of its active ingredients, ephedrine, pseudoephedrine,
17 phenylpropanolamine, or any of their salts, optical isomers, or
18 salts of optical isomers, or any number of packages of said
19 combination drug that contain a combined total of no more than
20 nine grams of ephedrine, pseudoephedrine, phenylpropanolamine, or
21 any of their salts, optical isomers, or salts of optical isomers.

22 2. All packages of any drug having a sole active ingredient
23 of ephedrine, pseudoephedrine, phenylpropanolamine, or any of
24 their salts, optical isomers, or salts of optical isomers, shall
25 be displayed and offered for sale only behind a checkout counter
26 where the public is not permitted, or within ten feet and an
27 unobstructed view of an attended checkout counter. This
28 subsection shall not apply to any retailer utilizing an

1 electronic anti-theft system that utilizes a product tag and
2 detection alarm which specifically prevents the theft of such
3 drugs from the place of business where such drugs are sold.

4 3. This section shall supersede any municipal ordinances or
5 regulations passed on or after December 23, 2002, to the extent
6 that such ordinances or regulations are more restrictive than the
7 provisions of this section. This section shall not apply to any
8 product labeled pursuant to federal regulation for use only in
9 children under twelve years of age, or to any products that the
10 state department of health and senior services, upon application
11 of a manufacturer, exempts by rule from this section because the
12 product has been formulated in such a way as to effectively
13 prevent the conversion of the active ingredient into
14 methamphetamine, or its salts or precursors or to the sale of any
15 animal feed products containing ephedrine or any naturally
16 occurring or herbal ephedra or extract of ephedra.

17 [3.] 4. Any person who is considered the general owner or
18 operator of the outlet where ephedrine, pseudoephedrine, or
19 phenylpropanolamine products are available for sale who violates
20 subsection 1 of this section shall not be penalized pursuant to
21 this section if such person documents that an employee training
22 program was in place to provide the employee with information on
23 the state and federal regulations regarding ephedrine,
24 pseudoephedrine, or phenylpropanolamine.

25 [4.] 5. Any person who knowingly or recklessly violates
26 this section is guilty of a class A misdemeanor.

27 488.029. There shall be assessed and collected a surcharge
28 of one hundred fifty dollars in all criminal cases for any

1 violation of chapter 195, RSMo, in which a crime laboratory makes
2 analysis of a controlled substance, but no such surcharge shall
3 be assessed when the costs are waived or are to be paid by the
4 state or when a criminal proceeding or the defendant has been
5 dismissed by the court. The moneys collected by clerks of the
6 courts pursuant to the provisions of this section shall be
7 collected and disbursed as provided by section 448.010 to
8 488.020. All such moneys shall be payable to the director of
9 revenue, who shall deposit all amounts collected pursuant to this
10 section to the credit of the state forensic laboratory account to
11 be administered by the department of public safety pursuant to
12 section 650.105, RSMo.

13 577.075. 1. It shall be unlawful for any person not the
14 owner or not in lawful control of an approved container of
15 anhydrous ammonia to release or allow the escape of anhydrous
16 ammonia into the atmosphere.

17 2. Unlawful release of anhydrous ammonia is a class B
18 felony, unless such release causes death of a human being or
19 causes serious physical injury to any person in which case it is
20 a class A felony.

21 650.105. 1. There is hereby created the "Missouri Crime
22 Laboratory Assistance Program" within the department of public
23 safety. The purpose of this program is to provide state
24 financial assistance to defray part of the operational costs
25 incurred by crime laboratories.

26 2. Funds that are appropriated and collected pursuant to
27 section 488.029, RSMo, for this program shall be appropriated to
28 the department.

1 3. Distribution of these state funds shall be by
2 contractual arrangement between the department and each
3 respective laboratory providing the service. Terms of the
4 contract shall be negotiable each year. The state auditor shall
5 audit from time to time all crime laboratories receiving state
6 funds.

7 4. Nothing in sections 650.100 and 650.105 shall prohibit
8 any crime laboratory from receiving federal or local funds should
9 such funds become available.

10 5. All law enforcement agencies, municipal, county and
11 state, shall have access to crime laboratories funded hereunder.

12 6. No state funds shall be expended unless appropriated by
13 the general assembly for this purpose.

14 7. No new crime laboratories shall be started with state
15 funds until authorized by the general assembly.

16 650.350. 1. There is hereby created within the department
17 of public safety the "Missouri Sheriff Methamphetamine Relief
18 Taskforce" (MoSMART). MoSMART shall be composed of five sitting
19 sheriffs. Every two years, the Missouri sheriffs' association
20 board of directors will submit twenty names of sitting sheriffs
21 to the governor. The governor shall appoint five members from
22 the list of twenty names, having no more than three from any one
23 political party, to serve a term of two years on MoSMART. The
24 members shall elect a chair from among their membership. Members
25 shall receive no compensation for the performance of their duties
26 pursuant to this section, but each member shall be reimbursed
27 from the MoSMART fund for actual and necessary expenses incurred
28 in carrying out duties pursuant to this section.

1 2. MoSMART shall meet no less than twice each calendar year
2 with additional meetings called by the chair upon the request of
3 at least two members. A majority of the appointed members shall
4 constitute a quorum.

5 3. A special fund is hereby created in the state treasury
6 to be know as the "MoSMART Fund". The state treasurer shall
7 invest the moneys in such fund in the manner authorized by law.
8 All moneys received for MoSMART from interest, state, and federal
9 moneys shall be deposited to the credit of the fund. The
10 director of the department of public safety shall distribute at
11 least fifty percent but not more than one hundred percent of the
12 fund annually in the form of grants approved by MoSMART.

13 4. All moneys appropriated to or received by MoSMART shall
14 be deposited and credited to the MoSMART fund. The department of
15 public safety shall only be reimbursed for actual and necessary
16 expenses for the administration of MoSMART, which shall be no
17 less than one percent and which shall not exceed two percent of
18 all moneys appropriated to the fund. The provisions of section
19 33.080, RSMo, to the contrary notwithstanding, moneys in the
20 MoSMART fund shall not lapse to general revenue at the end of the
21 biennium.

22 5. Any rule or portion of a rule, as that term is defined
23 in section 536.010, RSMo, that is created under the authority
24 delegated in this section shall become effective only if it
25 complies with and is subject to all of the provisions of chapter
26 536, RSMo, and, if applicable, section 536.028, RSMo. This
27 section and chapter 536, RSMo, are nonseverable and if any of the
28 powers vested with the general assembly pursuant to chapter 536,

1 RSMo, to review, to delay the effective date or to disapprove and
2 annul a rule are subsequently held unconstitutional, then the
3 grant of rulemaking authority and any rule proposed or adopted
4 after August 28, 2003, shall be invalid and void.

5 6. Any county law enforcement entity or established task
6 force with a memorandum of understanding and protocol may apply
7 for grants from the MoSMART fund on an application to be
8 developed by the department of public safety with the approval of
9 MoSMART. All applications shall be evaluated by MoSMART and
10 approved or denied based upon the level of funding designated for
11 methamphetamine enforcement before 1997 and upon current need and
12 circumstances. No applicant shall receive a MoSMART grant in
13 excess of one hundred thousand dollars per year. The department
14 of public safety shall monitor all MoSMART grants.

15 7. MoSMART's anti-methamphetamine funding priorities are as
16 follows:

17 (1) Sheriffs who are participating in coordinated multi-
18 jurisdictional task forces and have their task forces apply for
19 funding;

20 (2) Sheriffs whose county has been designated HIDTA
21 counties, yet have received no HIDTA or narcotics assistance
22 program funding; and

23 (3) Sheriffs without HIDTA designations or task forces,
24 whose application justifies the need for MoSMART funds to
25 eliminate methamphetamine labs.

26 Section 1. In any case where there is a violation of
27 chapter 195, RSMo, a judge may, upon a finding of guilty, order a
28 defendant to pay for costs for testing of the substances at a

